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MOTION TO...
August 16, 2023 12:44

By: WILLIAM A. CARLIN 0009144

Confirmation Nbr. 2938656

GINA CRISCIONE, ET AL.

CV 23 976445

vs.

Judge: NANCY MARGARET RUSSO

LAURA DIVINCENZO, ET AL.

Pages Filed: 4

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

GINA CRISCIONE, et al

Plaintiff

v.

LAURA DIVINCENZO, et al.

Defendant

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CASE NO. CV-23-976445

JUDGE: NANCY M. RUSSO

PLAINTIFFS' RULE 56(F) MOTION TO EXTEND DISCOVERY

Now comes the plaintiff, and moves the Court pursuant to Civ. R.56 (F). For the reasons made more clear in the memorandum attached hereto and made a part hereof.

Respectfully submitted,

/s/ William A. Carlin

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on August 16th, 2023, a copy of this said Motion was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

/s/ William A. Carlin

William A. Carlin (0009144)

MEMORANDUM

On July 24th, 2023, the Defendants filed a Motion for Leave to file a Motion for Summary Judgment *instante*. On July 25th, 2023, the Court granted the motion for leave to file the Motion for Summary Judgment. Civ. R. 56 (F) specifically provides that if a party opposing the Motion for Summary Judgment cannot for sufficient reasons present by affidavit facts necessary to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or make such order as is just.

The Plaintiff is unable to respond to the Defendant's Motion for Summary Judgment because they were prevented from taking the deposition of Laura DiVincenzo and Sara Thurmer. The parties agreed that those depositions would be taken within the discovery deadline. A copy of the email, confirming that agreement, is attached as Exhibit A. The Plaintiff then noticed the depositions for July 20th, 2023, within the discovery deadline.

Since Ms. Yoder was on vacation and Mr. Ockerman was occupied in depositions for another trial that was commencing very shortly, the parties agreed to do to conduct the DiVincenzo and Thurmer depositions the following week, which was subsequent to the discovery deadline. The Plaintiffs then noticed the depositions for July 20, 2023. However, the Defendants then informed the Plaintiffs that the Defendants refused to produce the witnesses.

Rather than seeking a protective order, the parties merely agreed to conduct the depositions the following week, which was subsequent to the discovery deadline.

Further, the courts discretion in granting continuances pursuant to Civ. R. 56(F) should be exercised liberally in favor of the nonmoving party who has requested a reasonable interval for the production of necessary rebuttal material. *Sabat v Garfield Mall Assoc.*, 8th Dist. Cuyahoga No.

87227, 2006-Ohio-4764, 2006 WL 2627454, ¶ 36 (Sept. 14, 2006). Additionally, “Civ R. 56(F) should be applied liberally to ensure a nonmoving party has adequate time to discover facts necessary to rebut a motion for summary judgment.” *I.G. Mayfiel LLC v. United States Liab. Ins. Group*, 2017-Ohio-1203, 88 N.E.3d 393 ¶18 (11 Dist.)

For these reasons, the plaintiff is requesting that the depositions of Ms. DiVincenzo and Ms. Thurmer be taken prior to the trial. Further, the depositions will not take more than 2 hours apiece. Further, the Plaintiffs will conduct the deposition at a time and place that is convenient for the Defendants, even if it's on a Saturday or Sunday.

Respectfully submitted,

/s/ William A. Carlin

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Kane Patricia

Kassay

Criscione v DiVincezo

Aol/Sent ☆

**William A. Carlin, Esq.** <wcarlinesq@aol.com> Tue, Jul 18 at 6:28 PM ☆
To: Emily Yoder, Brian Bardwell

Dear Mike and Emily, thank you for agreeing to produce Laura DiVincenzo Sara Thurmer for depositions next week even though it is after the discovery cutoff date.

Thanks,

Sincerely,

William A. Carlin

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